Federal Court  Cour fédérale

Date: 20160212

Docket: IMM-1275-15

Citation: 2016 FC 192

Ottawa, Ontario, February 12, 2016

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

RASHID AMIN SIDDIQUE

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] On October 3, 2002, an Immigration Officer found that the applicant, Mr. Rashid Amin Siddique, was inadmissible to Canada on security grounds because of his past membership in the Muttahida Quami Movement-Altaf [MQM-A], an organization for which there are reasonable grounds to believe has engaged in terrorism. Mr. Siddique then sought Ministerial relief from his inadmissibility finding pursuant to subsection 34(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], which governed such applications at the relevant time. The

Minister of Public Safety and Emergency Preparedness [the Minister] refused Mr. Siddique's application for Ministerial relief on February 24, 2015.

[2] Mr. Siddique now seeks judicial review of the Minister's decision and submits that the decision is unreasonable; the Minister erred in finding that it was implausible that he was not aware of the MQM/MQM-A's use of terrorist tactics and by relying on his past membership in the MQM/MQM-A as determinative of the application.

[3] Mr. Siddique's perspective is that the Minister's decision, that Mr Siddique's continued presence in Canada would be detrimental to the national interest, is based almost exclusively on his past involvement in the MQM/MQM-A, which he cannot change. Mr. Siddique believes that the Minister failed to take into account his efforts to live peacefully in Canada for over 20 years and that, as a result, Ministerial relief is illusory.

[4] Although the applicant's perspective is understandable, there is no error in the Minister's decision. The Minister's decision is discretionary and warrants significant deference. The decision is based on a thorough assessment of all the evidence and relevant factors and reflects the guidance of the Supreme Court of Canada in *Agraira v Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 SCR 559 [*Agraira*].

[5] Mr. Siddique's application for judicial review is dismissed.

I. Background

[6] Mr. Siddique arrived in Canada in December 1995 and sought refugee protection based on his political opinion and membership in the MQM/MQM-A in Pakistan. He was found to be a Convention refugee by the Immigration and Refugee Board [IRB] in September 1998.

[7] Mr. Siddique applied for permanent residence in February 1999. He was subsequently interviewed by the Canada Border Services Agency [CBSA] regarding his involvement with the MQM/MQM-A.

[8] Mr. Siddique was interviewed by a Citizenship and Immigration [CIC] Officer in August 2002. On October 3, 2002, the CIC Officer determined that there were reasonable grounds to believe that he was inadmissible pursuant to paragraph 34(1)(f) of the Act.

[9] Mr. Siddique applied for Ministerial relief from this finding on October 29, 2002.

[10] In May 2008, the CBSA disclosed its draft recommendation that Ministerial relief be denied. Mr. Siddique made submissions in response.

[11] In November 2012, another draft recommendation was disclosed, again recommending that Ministerial relief be denied.

[12] Mr. Siddique was denied Ministerial relief on May 1, 2013. As a result, his 2002 application for permanent residence was denied on June 15, 2013. He applied for leave and judicial review of the Ministerial relief decision. However, the Minister agreed to re-determine his application due to the Supreme Court of Canada's decision in *Agraira*.

[13] On February 12, 2014, the CBSA disclosed its draft recommendation to Mr. Siddique, which again recommended that Ministerial relief be denied. Mr. Siddique made submissions in response on May 7 and November 17, 2014.

[14] The Minister's decision, which is described in more detail below, is based on information gathered and analyzed by the CBSA and summarised in a Briefing Note which sets out the factual background, the relevant statutory provisions, the Ministerial relief process, the relevant factors, the applicable legal test for Ministerial relief and its recommendation.

II. The Applicant's Involvement with the MQM/MQM-A

[15] The CBSA Briefing Note describes the activities of the MQM and MQM-A and Mr. Siddique's involvement based on the information he provided.

[16] Mr. Siddique stated that he joined the MQM, a legitimate political organization, in Karachi to support the rights of Mohajirs in Pakistan. From 1984 to 1993, he worked closely with his cousin, who was a prominent MQM member who attended meetings of the party's central leadership. In his initial interview with CIC, he described himself as a passive MQM member, but in his submissions for Ministerial relief he referred to himself as an active member

with responsibilities including arranging political rallies, decorating the streets for gatherings and demonstrations, handing out flyers, posting banners and participating in political rallies and demonstrations. He described the political gatherings he participated in as peaceful.

[17] He stated that after 1985, there was widespread violence in Karachi and that the government blamed the MQM for acts of violence that were actually committed by terrorists who were encouraged by the government. He acknowledged that the MQM participated in violence in 1985, but stated that he stayed away from this violence.

[18] An organizational split in the MQM in 1993 resulted in the MQM-A and MQM-H factions. In his Personal Information Form [PIF], Mr. Siddique stated that the MQM-A was blamed for incidents that the MQM-H was responsible for. He added that he relocated within Karachi in 1993 due to the violence between the two factions, but in October 1994, he was kidnapped, beaten and interrogated by armed MQM-H members. His family paid a bribe to secure his release and he then kept a low profile and discontinued his activities with the MQM-A.

[19] In December 1994, he went into hiding following an assault and threats by the MQM-H members looking for his cousin. He and his cousin were falsely accused of the death of a prominent MQM-H member and his name was placed on the government of Pakistan's terrorist list.

[20] After learning that his cousin had been arrested, tortured and killed in October 1995, he fled Pakistan and arrived in Canada in December 1995.

[21] Mr. Siddique attended MQM meetings in Canada between 1995 and 1998 and made several small financial contributions to the organization. In his CIC interview and in his 2002 and 2008 submissions, he described that his involvement was minimal, that he did not participate in any demonstrations and that he had not responded to phone calls from the organization since 1998. However, in his February 1999 application for permanent residence, he stated that he still considered himself a member, and in his July 1999 interview, he stated that he was still attending meetings.

[22] In his 2008 submissions, Mr. Siddique noted that politics in Pakistan involves violence. However, he did not consider the MQM/MQM-A to be a terrorist organization, believing that it advocated peace and opposed violence. He maintained that the MQM-H and the Pakistani government were responsible for the violence. He also maintained that he was a low level party member who did not have a position of influence, opposed violence and did not participate in violent activity. He stated that he learned of the criminal activities of the MQM/MQM-A after arriving in Canada and then disassociated himself. He explained that members in Pakistan were sheltered from this information and although he had some information, the MQM/MQM-A leadership claimed that these allegations were unfounded and government propaganda.

[23] In his 2014 submissions, he stated that he had never claimed that the MQM/MQM-A did not participate in violence at all; rather, that he was not aware of its role in provoking violence. He also argued that not all violence constitutes terrorism.

III. The Minister's Decision

[24] As noted above, the CBSA Briefing Note includes the recommendation by the President of the CBSA that Ministerial relief should not be granted. The Minister agreed with the recommendation and indicated that he was "not satisfied that the presence of Mr. Rashid Amin Siddique in Canada would not be detrimental to the national interest. I deny relief."

[25] The reasons for the Minister's decision are, therefore, the reasons set out in the CBSA Briefing Note (*Canada (Minister of Public Safety and Emergency Preparedness) v Khalil*, 2014 FCA 213 at para 29, 464 NR 98).

[26] The CBSA noted that, while the facts differ, the principles established by the Supreme Court of Canada in *Agraira* regarding the application of subsection 34(2) apply.

[27] The CBSA found that the evidence regarding Mr. Siddique's involvement first, in the MQM and then in the MQM-A supports the conclusion that his association with the MQM/MQM-A was active, for the most part, and his involvement was not insignificant.

[28] In response to Mr. Siddique's claim that he was always opposed to violence, was not involved in violent activity and was not in a position of influence in the organization, the CBSA

found that, regardless, his political activities and financial support contributed to the MQM/MQM-A as a whole, an organization for which there are reasonable grounds to believe has engaged in acts of terrorism.

[29] Mr. Siddique's acknowledgement that he avoided the violence that took place during the 1985 protests was found to demonstrate that he was aware that the MQM engaged in violence. He also admitted to being aware of the factional fighting between the MQM-A and MQM-H in the early 1990s, including the 1994 violent clash between the MQM-A and MQM-H, which occurred in his neighbourhood and resulted in casualties.

[30] The CBSA referred Mr. Siddique's submissions which took issue with the CBSA's consideration of the fact that his name was on a "terrorist list", maintaining that this was due to false criminal charges arising from the 1994 clash. However, the CBSA clarified that it did not presume that he was complicit or participated in acts of terrorism because his name was on this list, but considered this as a factor in finding that there was a reasonable likelihood that he was *aware* of the MQM/MQM-A's participation in violent activities. Together with the other evidence, the CBSA found that it was implausible that he was not cognizant of the violent activities perpetrated by the MQM/MQM-A until after his arrival in Canada or that he believed that many of the acts of violence were perpetrated by others or were government propaganda.

[31] The CBSA rejected Mr. Siddique's submission, which sought to distinguish violence from terrorist violence, noting that the jurisprudence does not recognize such a distinction (*Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 SCR 3

[*Suresh*]). In addition, the CBSA noted that the Federal Court has upheld findings that the MQM/MQM-A engaged in acts of terrorism.

[32] The CBSA found that the evidence of Mr. Siddique's history of involvement in Pakistan, his continued support of the MQM/MQM-A after arriving in Canada, and his failure to disassociate from it, is indicative of a pattern of support and level of involvement in the organization.

[33] The CBSA acknowledged that the MQM/MQM-A may have pursued legitimate political goals and activities, but found that this does not detract from its reliance on terrorist methods and does not justify Mr. Siddique's involvement and commitment to the group given his knowledge of those terrorist activities.

[34] The CBSA gave Mr. Siddique's expression of remorse in 2008 little weight given that it came ten years after his alleged disassociation from the MQM-A and only in response to the negative draft Ministerial relief recommendation.

[35] The CBSA acknowledged Mr. Siddique's submissions that he is law-abiding, has no criminal record and does not pose a danger to Canada, as well as the 2002 report of a CIC Officer who was not convinced that Mr. Siddique's presence in Canada posed a danger to national security. The CBSA found that he did not meet his burden to satisfy the Minister that his presence in Canada would not be detrimental to the national interest.

[36] The CBSA also acknowledged that Mr. Siddique remains in a "legal limbo" as a Convention refugee in Canada who cannot obtain permanent resident status due to his inadmissibility and, therefore, cannot reunite with his family. The CBSA found that his status as a Convention refugee does not on its own, or in conjunction with the other factors, entitle him to Ministerial relief. The CBSA added that he remained a Convention refugee and was not subject to removal.

[37] The letters of support, medical submissions and financial submissions were considered but were found not determinative when considered alongside the predominant considerations relating to national security and public safety.

[38] In response to Mr. Siddique's submissions that the test for Ministerial relief should be forward looking, the CBSA found that the national interest considerations are not so limited, as noted in *Agraira*. Taking into consideration all the circumstances of the case and the evidence, the CBSA found that it would be detrimental to the national interest to grant relief from inadmissibility, given Mr. Siddique's failure over a long period of time to disassociate from the MQM/MQM-A and his commitment to the group, despite the reasonable likelihood that he knew it engaged in terrorist activities.

IV. The Issues

[39] The applicant argues that the decision is not reasonable because:

(1) The implausibility finding is not reasonable; the Minister erred in finding that it was implausible that the applicant was not aware of the MQM/MQM-A's use of

terrorist tactics and relied on speculation that was contrary to the applicant's evidence and the country conditions at the time; and,

(2) The Minister's assessment of the application is not reasonable; the Minister erred by considering the applicant's membership in the MQM/MQM-A as determinative of the application and merely listed the other relevant and positive factors without providing any reasons for disregarding them.

V. The Standard of Review

[40] The standard of review of the Minister's decision regarding a denial to grant relief pursuant to subsection 34(2) is that of reasonableness (*Agraira* at para 50).

[41] Where the standard of reasonableness applies, the Court considers whether the decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190). Deference is owed to the decision maker and the Court will not re-weigh the evidence.

VI. Other Relevant Principles

[42] As noted by Justice Mactavish in *Hameed v Canada (Minister of Public Safety and Emergency Preparedness)*, 2015 FC 1353 at paras 24-29, [2015] FCJ No 1488 (QL) [*Hameed*], several principles guide the judicial review of a Minister's decision pursuant to subsection 34(2). These include that: the onus is on the applicant to satisfy the Minister that his presence in Canada would not be detrimental to the national interest; the test to be applied to determine whether

Ministerial relief should be granted is guided by a range of factors, as established in *Agraira*, and includes the factors set out in the CIC Guidelines; and, Ministerial relief is distinct from humanitarian and compassionate [H&C] relief, although personal factors may be considered in an application for Ministerial relief in the context of the determination whether the applicant can be viewed as a threat to the security of Canada.

[43] In *Agraira*, the Supreme Court of Canada found that the Minister's interpretation of the term "national interest", which focussed on matters related to national security and public safety, but also encompassed the considerations in the Guidelines and analogous considerations, was reasonable (at para 64). The Court elaborated and provided a summary at paras 87-88:

> [87] In summary, an analysis based on the principles of statutory interpretation reveals that a broad range of factors may be relevant to the determination of what is in the "national interest", for the purposes of s. 34(2). Even excluding H&C considerations, which are more appropriately considered in the context of a s. 25 application, although the factors the Minister may validly consider are certainly not limitless, there are many of them. Perhaps the best illustration of the wide variety of factors which may validly be considered under s. 34(2) can be seen in the ones set out in the Guidelines (with the exception of the H&C considerations included in the Guidelines). Ultimately, which factors are relevant to the analysis in any given case will depend on the particulars of the application before the Minister (*Soe*, at para. 27; *Tameh*, at para. 43).
>
> [88] This interpretation is compatible with the interpretation of the term "national interest" the Minister might have given in support of his decision on the appellant's application for relief. It is consistent with that decision. <u>The Minister's implied interpretation of the term related predominantly to national security and public safety, but did not exclude the other important considerations outlined in the Guidelines or any analogous considerations</u>. In light of my discussion of the principles of statutory interpretation, this interpretation was eminently *reasonable*.
>
> [Emphasis added.]

VII. Is the Implausibility Finding Reasonable?

The Applicant's Submissions

[44] The applicant argues that the Minister's central finding is that he was a long-term, committed member of the MQM/MQM-A and that he knew, or was reasonably likely to know, that the MQM/MQM-A was involved in terrorist activities. The applicant argues that this finding is based on an unreasonable implausibility finding.

[45] The applicant submits that credibility findings based on plausibility must be made cautiously and only when events could not have happened as described (*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7, [2001] FCJ No 1131 (QL) [*Valtchev*].

[46] First, the applicant submits that the implausibility finding does not reflect consideration of all of the evidence. Instead, the Minister's decision is based on speculation about what people ought to have known at the time. This ignores the chaotic country conditions in Pakistan in the 1980s and 1990s when information was distorted by the government and other sources of information were not easily accessible, as they are today.

[47] The applicant adds that the MQM/MQM-A was a political organization that represented millions. His belief at the time was that it was not engaged in terrorism. Although he does not believe this now, the Minister cannot impose current thinking about the availability of information to the situation that existed in the 1980s and 1990s.

[48] The applicant points to the 1996 Amnesty International report on the "Human Rights Crisis in Karachi" which notes that "[i]n the highly politicized climate of Karachi, the truth is difficult to establish with certainty by any human rights organization…." The report notes that the government, MQM-H and MQM-A were all committing human rights abuses and that misinformation was rampant and often deliberately created by the government. The applicant submits that this report corroborates that the government was spreading misinformation and that the MQM-A leadership misled its members.

[49] The applicant points out that he provided all the information relied on by the Minister. He disclosed his involvement with the MQM/MQM-A when he arrived in Canada, consistently denying that he had knowledge of the MQM/MQM-A's involvement in terrorism while he was associated with the organization.

[50] Second, the applicant argues that the IRB and the CIC Officer both found him to be credible; they heard from him first hand and were in the best position to assess his credibility, unlike the Minister. Although the Minister is entitled to reach different conclusions, the applicant argues that there must be a clear explanation of why the Minister ignored these earlier credibility findings.

[51] Third, the applicant argues that the Minister erred by conflating "violence" and "terrorism", because not all violence is terrorism, noting that the definition of terrorism in *Suresh* includes both an act and a purpose. He submits that his involvement in the MQM/MQM-A was only to advance legitimate political purposes.

The Respondent's Submissions

[52] The respondent submits that the Minister reasonably concluded that the applicant failed to discharge his burden of demonstrating that his presence in Canada would not be detrimental to the public interest.

[53] The Minister was not selective in considering the evidence and did not need to find that the applicant's entire account lacked credibility in order to find that certain parts of his account were implausible.

[54] Nor did the Minister err in not adopting the credibility findings made by the IRB and the CIC Officer. The IRB assessed whether the applicant was a Convention refugee, i.e., whether he was at risk in Pakistan, not whether he was inadmissible to Canada. Neither the IRB nor the CIC Officer assessed whether the applicant was aware of the MQM/MQM-A's use of violence and terrorism to achieve its political goals. The Minister considered a different issue, which was whether it was plausible that the applicant was not aware of the MQM/MQM-A's activities.

[55] The country condition evidence regarding the political situation in Pakistan in the 1980s and 1990s was not ignored and does not explain or justify the applicant's claimed lack of awareness given his activities.

[56] The respondent submits that any type of violence can be considered in determining that an organization engaged in terrorism, noting that the IRB and the Federal Court have upheld the

finding that the MQM/MQM-A is an organization that relies on terrorist tactics to achieve its political goals.

[57] The respondent adds that the question before the Minister was not whether the applicant was part of an organization that committed terrorist acts. That decision had already been made by the inadmissibility finding. The question before the Minister was whether it was in the national interest to allow the applicant to remain in Canada. In considering that issue, the Minister took all the facts into account, including the applicant's knowledge of the MQM/MQM-A's use of violence and his continued membership and provision of support to the organization, which signals that he condones such violence.

The Implausibility Finding is Reasonable

[58] The Minister reasonably found that it was implausible that the applicant was not aware of the MQM/MQM-A's use of violence to advance its cause. The applicant lived in Karachi, the centre of violent activity, he supported the activities of his cousin, a prominent member, and he experienced the violence between the MQM-A and MQM-H to the extent that he relocated and went into hiding. The applicant acknowledged that the MQM/MQM-A was engaged in violence and that civilian deaths occurred. Although he did not consider it to be terrorism and characterised it as self-defence, it was violence nonetheless, in pursuit of political goals.

[59] The implausibility finding was not based on speculation, but on the information provided by the applicant and the country condition evidence, all of which was considered and noted in detail in the CBSA Briefing Note. With respect to the applicant's argument that the Minister

ignored the documentary evidence describing the chaotic situation in Pakistan at the time, including that the Pakistani government blamed the MQM/MQM-A for violence committed by the government and that no one knew the truth, the CBSA Briefing Note refers to Mr. Siddique's submissions that he believed the violence attributed to the MQM/MQM-A was due to government propaganda, but clearly rejected that assertion.

[60] Even in the chaotic political context of the time and without the benefit of today's methods of information sharing, the Minister's implausibility finding is reasonable.

[61] The Minister was not bound to adopt the credibility findings made by the IRB or the CIC Officer who interviewed the applicant. The IRB and the CIC Officer did not assess the same issue as the Minister. As the respondent notes, there is no inconsistency between the IRB finding that the applicant's evidence of the risk he faced was credible and the Minister's finding that it was implausible that the applicant was unaware that the MQM/MQM-A engaged in terrorist activities.

[62] Moreover, the Minister was entitled to believe some aspects of the applicant's story but to also draw inferences that other aspects of his story were implausible.

[63] In *NK v Canada (Minister of Public Safety and Emergency Preparedness)*, 2015 FC 1377, [2015] FCJ No 1449 (QL) [*NK*], Justice Russell considered the reasonableness of the Minister's decision to refuse relief from a finding of inadmissibility and noted at paras 80-81:

> [80] In exercising his discretion in this context, the Minister carefully examined the Applicant's assertion that he was unaware

> of MQM's acts of terrorism and came to the conclusion referred to above. […]
>
> [81] There was no direct evidence of the Applicant's knowledge of terrorism before the Minister but, as the Applicant concedes, the Minister was entitled to draw inferences. In doing this, I cannot say that his conclusions fall outside of the range posited in *Dunsmuir*, above. Consequently, I can find no reviewable error on this ground.

[64] Similarly, in the present case, the Minister drew a reasonable inference that the applicant knew that the MQM/MQM-A engaged in violence.

VIII. Is the Minister's Assessment of the Application for Ministerial Relief Reasonable?

The Applicant's Submissions

[65] The applicant submits that the Minister erred by focusing only on his past membership in the MQM/MQM-A until the late 1990s and his failure to disassociate himself as determinative of his application for Ministerial relief.

[66] The applicant adds that the emphasis on his past is particularly unreasonable given that he has waited since 2002 for a decision. The same decision could have been made in 2002 given that his subsequent efforts and circumstances were not considered.

[67] The applicant acknowledges that the test for Ministerial relief is not limited to future considerations or a forward looking assessment. In accordance with *Agraira*, past actions are relevant and may be sufficient for the Minister to determine that a person's presence would be detrimental to the national interest in the future. However, the Minister failed to consider

whether and how the applicant's past is determinative of his future. The Minister's approach makes it impossible for him to ever overcome his past.

[68] The applicant submits that a forward looking assessment of his presence in Canada should have been conducted, along with consideration of the other factors such as his limited involvement in the MQM/MQM-A since arriving in Canada, the psychological impact of a negative decision, his medical issues and his activities since arriving in Canada.

[69] The applicant argues that the Minister's approach results in the test for inadmissibility under subsection 34(1) pre-determining the test for Ministerial relief under subsection 34(2), which makes Ministerial relief illusory.

[70] The applicant also submits that the Minister simply cited a list of the factors considered without providing any reasons why the positive factors do not outweigh the national security and public safety concerns.

The Respondent's Submissions

[71] The respondent submits that the considerations in a Ministerial relief application are not limited to considerations of present or future danger. The Minister's interpretation of the national interest is consistent with *Agraira*. In *Agraira*, the Minister did not take a forward looking approach and considered the same factors as in the present case, yet the Supreme Court of Canada found the decision to be reasonable.

[72] The Minister's focus on the applicant's past activities does not make the exercise of discretion meaningless. The CBSA Briefing Note cites the applicant's long involvement in the MQM/MQM-A, the nature and timing of his activities, and his continued support after becoming aware of the violent activities – all factors which raise national security concerns.

[73] The Minister explicitly referred to the factors in the applicant's favour, but is entitled to give factors that address national security and public safety more weight. In *Agraira*, the Supreme Court of Canada found that the predominant factors to be considered in interpreting national interest under subsection 34(2) are national security and public safety and that subsection 34(2) is distinct from section 25 which permits relief on H&C grounds.

The Minister's Assessment of the Application for Ministerial Relief is Reasonable; the Minister applied the principles in Agraira and did not err in exercising his discretion

[74] Subsection 34(2) governed the application for Ministerial relief against a finding of inadmissibility pursuant to subsection 34(1) on national security grounds at the time of the applicant's application and stated:

34(2) The matters referred to in subsection (1) do not constitute inadmissibility in respect of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest.	**34(2)** Ces faits n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui convainc le ministre que sa présence au Canada ne serait nullement préjudiciable à l'intérêt national.
[Emphasis added.]	[Soulignement ajouté.]

[75] In *Agraira*, as noted above, the Supreme Court of Canada provided guidance on the interpretation of "detrimental to the national interest". In *Hameed* at para 26, Justice Mactavish highlighted the test set out in *Agraira* at para 87 and specifically noted the factors to be considered, which are derived from the CIC Guidelines.

[76] It is apparent from the CBSA Briefing Note that the Guidelines were considered along with the sub-questions noted therein. For example, to assess whether the applicant's presence would be offensive to the Canadian public, the CBSA should consider, among other issues: whether the activity was an isolated event; when the activity occurred; whether violence was involved; whether the person was personally involved or complicit in the activities of the regime or organization; the length of time that the applicant was a member of the organization; whether the organization was internationally recognized as one that uses violence to achieve its goals; the role or position of the person within the organization; and whether there is evidence to indicate that the person was not aware of the atrocities or terrorist activities committed by the organization.

[77] The CBSA and the Minister relied on these and other considerations which led the Minister to find that he was not satisfied that Mr. Siddique's presence in Canada would not be detrimental to the national interest. The CBSA Briefing Note highlighted that Mr. Siddique worked for MQM/MQM-A in Pakistan for at least 15 years and continued to support the MQMA in Pakistan even after his own kidnapping, beating and threats, which prompted him to relocate within Karachi. The nature of his activities, although described by him as low level, included arranging political rallies, posting flyers and preparing the streets for demonstrations. He worked

alongside his cousin, who he knew was a prominent member, and who was forced into hiding and later tortured and killed in 1995 – a clear signal of the level and nature of violence between the two factions. In addition, he did not disassociate himself from the MQM/MQM-A despite his awareness of its violence until at least four years after coming to Canada. His own characterisation of this violence as something other than terrorist violence does not overcome the fact that he was aware of the nature of the violence, which resulted in deaths, and that violence was used to achieve political goals.

[78] In *Afridi v Canada (Minister of Public Safety and Emergency Preparedness)*, 2015 FC 1299, [2015] FCJ No 1377 (QL) [*Afridi*], Justice Mactavish noted:

> [35] Finally, Mr. Afridi submits that the Minister unreasonably focussed on his past involvement with the MQM and the nature of the organization rather than on his current personal situation. It is not, however, an error for the Minister to consider past actions in assessing whether a person's continued presence to Canada would be detrimental to the national interest. Indeed, national security and public safety consideration are not limited to assessments of current and future risk, and it bears noting that much of the focus in *Agraira* was on Mr. Agraira's past activities in Libya. Moreover, as the briefing note observes, Mr. Afridi ceased being involved with the MQM in Canada because he became too busy with his family and his job, and not because he was disassociating himself from the organization and its tactics. It was therefore reasonable for the Minister to have regard to these factors in assessing whether it was in the national interest to grant Ministerial relief to Mr. Afridi.

[79] Similarly, in the present case, the Minister did not err in considering Mr. Siddique's past in determining whether he had satisfied the Minister that his continued presence in Canada would not be detrimental to the national interest. As noted above, the CBSA Briefing Note thoroughly describes the factors relied on.

[80] The Minister's application of subsection 34(2) to the facts does not make relief illusory or impossible. The factors considered to grant or deny relief differ from those that resulted in the applicant's inadmissibility. The finding of inadmissibility on security grounds pursuant to paragraph 34(1)(f) focusses on membership in an organization, in this case one that there are reasonable grounds to believe engages, has engaged or will engage in acts of terrorism.

[81] With respect to the applicant's argument that the Minister failed to give adequate consideration to or explain his reasons for downplaying the positive factors, in *Agraira*, the Supreme Court noted the distinction between Ministerial relief and relief based on H&C grounds, both of which can relieve against the requirements of IRPA:

> [44] In short, s. 34(2) of the IRPA establishes a pathway for relief which is conceptually and procedurally distinct from the relief available under s. 25 or s. 25.1. It should be borne in mind that an applicant who fails to satisfy the Minister that his or her continued presence in Canada would not be detrimental to the national interest under s. 34(2) may still bring an application for H&C relief. Whether such an application would be successful is another matter.
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> [Emphasis added.]

[82] Although the Act has been amended to both change the wording of the Ministerial relief provision (which is now found in section 42.1 and requires that an applicant "satisfy the Minister that it is not contrary to the national interest") and make those found inadmissible to Canada ineligible for H&C relief, the purposes of the two forms of relief differ. In *Agraira* at para 84, the Supreme Court noted that a Ministerial relief application should not be transformed into an alternative form of H&C relief, adding, "But s. 34 does not necessarily exclude the consideration of personal factors that might be relevant to this particular form of review."

[83] The Supreme Court found that the predominant considerations for subsection 34(2) are national security and public safety. In addition, other "important considerations outlined in the Guidelines or any analogous considerations" can be taken into account and the factors which are relevant to the Minister's analysis "will depend on the particulars of the application before the Minister" (*Agraira* at paras 87-88). As a result, H&C factors can be considered, but only in the context of determining whether an applicant's presence in Canada is detrimental to the national interest.

[84] Judicial review focuses on whether the decision is reasonable and there is no basis to find that it was not. The Minister's decision addresses all of the evidence and applies the governing jurisprudence to the facts before the Minister. It is not the role of the Court to re-weigh the evidence. Nor is the Minister required to provide reasons for why certain factors were given more weight than others. As noted in *Agraira*, the predominant factors are national security and public safety and, therefore, attaching more weight to those factors is reasonable.

[85] This Court recently found the Minister's exercise of discretion to be reasonable on similar facts in four recent cases: *NK*, *Afridi*, *Hameed* and *Sellathurai v Canada (Minister of Public Safety and Emergency Preparedness)*, 2015 FC 1264, [2015] FCJ No 1338 (QL).

[86] The consequences for the applicant are no doubt of concern to him. I note that the applicant indicates that he applied for H&C relief and was refused, however, the Minister agreed to reconsider that application in 2014. As noted above, the Act was amended to limit H&C relief and it is not known whether the applicant's application remains pending. In *Agraira*, the

Supreme Court of Canada's findings regarding the distinction between relief pursuant to subsection 34(2) and section 25 were based on the law as it existed before the amendments – i.e., which did not exclude persons found inadmissible pursuant to section 34 from making a H&C application.

[87] In *Hameed*, the applicant argued that *Agraira* should be revisited because it was premised on H&C relief being available and this is no longer the law. Justice Mactavish considered the issue, noting:

> [51] The decision in *Agraira* was rendered by the Supreme Court on June 20, 2013. The *Faster Removal of Foreign Criminals Act*, S.C. 2013, c. 16 (FRFCA), received royal assent the previous day. Paragraph 9 of the FRFCA amended subsection 25(1) of IRPA, rendering persons found inadmissible to Canada under sections 34, 35 and 37 of IRPA ineligible for humanitarian and compassionate relief under to subsection 25(1) of the Act.
>
> [52] Although the FRFCA was introduced in Parliament on June 20, 2012, the Supreme Court did not consider the effect of the pending legislative change in *Agraira*, and it may be that the question raised by Ms. Hameed will have to be addressed at some point down the road. There are, however, several reasons why this is not the appropriate case in which to do it.

[88] Justice Mactavish noted that the decision in *Agraira* was binding on the Minister when he determined the application for Ministerial relief and it is binding on this Court. In addition, Ms. Hameed had raised this argument only at the last minute in her oral submissions. Moreover, relevant H&C factors had been considered in the context of the relief application.

[89] In the present case, the applicant did not raise this particular argument, only that H&C factors were relevant but were discounted. As noted above, the Minister is entitled to weigh all

the relevant factors as he sees fit. The H&C considerations, including that the applicant has no criminal record, his "legal limbo", his separation from his family and his medical issues, were noted, but did not change the outcome when considered along with the predominant considerations relating to national security and public safety.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question was proposed for certification.

"Catherine M. Kane"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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